"14. The State shall not deny any person equality before the law or the equal protection of the laws within the territory of India."

In this case we are concerned only with the construction of the words "the equal protection of the law" in reference to the facts of this case. Mr. Sivalingam cited to us four Indian cases namely: —

(1) *Mammad Keyi* v. *Wealth Tax Officer;*[5]
(2) *Narayanamurthy* v. *Commissioner of Wealth Tax;*[6]
(3) *Keloth Mammad* v. *Wealth Tax Officer;*[7]
(4) *V. V. R. Varma* v. *Union of India.*[8]

In India the Hindu undivided family is assessed to income tax as a distinct entity or a unit of assessment. A member of a Hindu undivided family is not taxable at all in respect of any sum which he receives as a member out of the income of the family; even though the family may not have paid the tax on this income.

In *Mammad Keyi's* case the court held that: —

"The Hindu undivided families of wealth have been singled out by the Act from other similar joint families in the country and the State has thereby denied equal protection of the law to the former."

The other three courts, however, held that the provisions of the Wealth Tax Act dealing with the Hindu undivided family are constitutional. In *Narayanamurthy's* case the court pointed out: —

"It cannot also be held that the rates of tax as given in the schedule providing for different rates for individuals and Hindu joint families amount to unfair discrimination. It is open to Parliament to say that the number of undivided families or non-Hindus is so negligible that it is not necessary to treat them as a separate entity."

Counsel went on to point out:

"that the judge was of the view that the classification was rational in that non-Hindu joint families are so negligible that they could be ignored. In plain terms the Act covered the majority and only the minority was left out. That is not true of the situation in this country. Here the number of Hindu joint families is very small compared to other Hindus or non-Hindus. Thus it is a case of taxing the minority and excluding the majority. It is also a burden on the minority with no rational basis. In India the rigour of the law taxing an undivided family as an individual is mitigated by special provisions granting higher ceiling of deduction on account of insurance premia and by a larger initial margin of income exempt from income tax. But there are no similar provisions in the law of this country."

That was how the question was argued before us.

In reply to that argument Encik Nizar pointed out that the provision pertaining to Hindu joint family is a provision regulating personal law of the Hindu and as such it is excepted under clause (5)(a) of Article 8.

In my view the appeal should be dismissed for the following reasons. Hindu law is the personal law of the appellants and by reason of clause (5) of Article 8 does not invalidate it. The Hindu joint family is the normal condition of Hindu society in India and undivided Hindu family is ordinarily joint not only in estate but also in food and worship. See *Sri Raghunandha* v. *Brozo Kishore.*[9] The two Hindu families in this case have by personal choice regarded their property as that of a joint Hindu property. The basis of their liability to pay income tax however, is not solely based on the fact that they were of Hindu religion but on the fact that they have always regarded their joint property as belonging to one unit and the income of that property as the income of one person.

After we had reserved our judgment Mr. Sivalingam sent us what he calls his additional submissions for the appellant. He had apparently sent a copy to Encik Nizar, with the result that we also received his additional submission in reply. In his additional written submission Mr. Sivalingam referred to the deed of partition executed by N., Kalescharan, B., Srinivas, Kailawati and Premwati, whereby they agreed among themselves that the joint family consisting of themselves as members of the family be separated. After the deed of partition which was done in 1958, the business of Shuparshad & Bros. was registered as a partnership whereby all the partners were described as partners and not as members of the Hindu family. In this case we are concerned with the joint family of B. and N. and according to the Hindu law after separation of one family each member of the family after separation will be the nucleus of another family of which he will be the head. So this argument must also fail.

The appellants will pay the costs of this appeal, and their deposit of $500/- will be paid to the respondent towards its taxed costs.

Gill and **Ong Hock Sim F.JJ.** concurred.

Appeal dismissed.

Solicitors: *Lim Kean Chye & Co.*

M.N. GUHA MAJUMDER v. R.E. DONOUGH

[O.C.J. (B.T. H. Lee J.) June 24, 1974]
[Kuching — Civil Suit No. K. 101 of 1969]

Land Law — Sale of Land — Fraudulent misrepresentation — Breach of contract — Damages — Oral contract — When came into existence — Statute of Frauds.

The property which was the subject of this action was advertised for sale and written offers to purchase were invited. The plaintiff viewed the property on two occasions. During the interval between the two occasions the plaintiff was in communication with the defendant's agent and it was alleged that the defendant had accepted the plaintiff's offer to purchase the property for $70,000. There had been on the occasion of the second visit to the property some discussion on the mode of payment. There was also no clear agreement on the sale of orchid plants which the defendant wished to sell separately although the matter was discussed between the parties. The defendant denied that he had decided to go on with the sale. The defendant was anxious however, to effect a quick sale as he was desirous of leaving Kuching permanently for Johore Bahru. The question for determination was whether there was a contract in existence between the plaintiff and the defendant at the material time.

Held: (1) the law does not impute an intention to enter into such a legal relationship as that of vendor and purchaser where the circumstances and the conduct of the parties negative any intention of the kind;

(2) the evidence indicated that the parties did not intend to be immediately bound. They had not the necessary *animus contrahendi.* What passed was only a negotiation from beginning to end;

(3) even if as alleged by the plaintiff, there was an oral contract, it was unenforceable in law for failure to conform with the provisions of the Statute of Frauds.

Cases referred to:-

(1) *Soon Hon Seng* v. *Bong Khiuk Nyong* Federal Court Civil Appeal No. 20 of 1971 (unreported).

(2) *Law* v. *Jones* [1972] 2 W.L.R. 994.

(3) *Tiverton Estates Ltd.* v. *Wearwell Ltd.* (1974) 1 All E.R. 209.

CIVIL SUIT.

S. Sidhu for the plaintiff.

M. Chan for the defendant.

B.T.H. Lee J.: The plaintiff's claim for *inter alia* damages for breach of contract and damages for fraudulent misrepresentation. The claim for specific performance was abandoned at the hearing.

An advertisement appeared in the *Sarawak Tribune* dated 21st May, 1969 for the sale by the defendant R. E. Donough of his house in these terms:

"*Property for Quick Sale*

Tenders are invited for the purchase of attractive house and garden in first class residential area at No. 3 Jalan Bukit Hantu. Highland of 4.34 acre.

Firm offers in writing should reach the address given below by noon on 28.5.69. There is no undertaking to accept the highest or any other offer.

Further particulars or to view the property may be obtained on application to: Reddi & Co., Lanka Building, Kuching."

Some three days later, i.e. on 24th May, 1969, the plaintiff desiring to purchase the property together with Mr. T. O. Thomas and Mr. Reddi called at the said house and inspected it together with the furniture and the orchids.

By 2nd June, 1969, the plaintiff again in the company of Mr. T. O. Thomas and Mr. Reddi called at the said house.

During the interval between the first visit and the second visit, a number of telephone conversations took place between the plaintiff and Mr. Reddi. It was alleged that the defendant accepted the offer to purchase the house, orchids and furniture for $70,000.

It was alleged that the mode of payment of the purchase price was discussed during the earlier part of the second visit.

The defendant on the other hand said he had not decided to go on with the sale and had not accepted the mode of payment of the purchase price suggested by the plaintiff when he (the defendant) suggested that an inventory be taken of the "remaining furniture" by the plaintiff.

In the course of argument it was maintained on plaintiff's behalf that a contract was already in existence before the 2nd June, 1969.

Essentially, however, the question for determination is whether in the state of facts there is a contract in existence between the plaintiff and the defendant at the material time.

As often happens, a court on the evidence before it, has to decide which of two conflicting versions is the version to accept. In such a case as this, a court in considering which is the more probable one, ought to try and derive what assistance it can get from undisputed facts, if any, which are relevant for the purpose.

I propose first to deal with the evidence of the parties. For that purpose I will quote the relevant passages.

The plaintiff's evidence was as follows (see page 7 of Record):

"Q. Did the defendant say he would consider an offer of house, furniture and orchids.

A. Yes.

Q. If a would-be purchaser would throw in a sum he would give the orchids and furnitures.

A. No. He said he was offering the house, furnitures and orchids in one sale."

and he continued later at page 8:

"Q. On your 2nd visit i.e. 2nd June, did you not say the following proposition — first you would pay $30,000 after the holidays.

A. Yes.

Q. Balance would be paid at end of June 1969.

A. Yes."

and further down:

"Q. Is it true defendant did not accept your offer at that stage.

A. He had accepted."

and in re-examination at page 9 of Record:

"Yes defendant in presence of T.O. Thomas agreed to sell house with orchids and furnitures."

Then Mr. T. O. Thomas (PW2) said at pages 14 and 15 of Record:

"The plaintiff said first he would be able to pay at the end of the month. Defendant said that he should have at least $30,000 within a few days. Plaintiff said that he had only $18,000 ready. Seeing the difficulty I offered to lend $12,000 as a friendly loan without any interest.

It was agreed between plaintiff and defendant that $30,000 would be paid on 3rd June owing to the holidays. I could not get the money until the bank opened. Defendant agreed to the proposal. The balance $40,000 to be paid by the end of the month."

Subsequently in cross-examination he said at page 16:

"Q. Did not defendant say if the would-be purchaser would throw in sufficient money he would consider it with the sale of the house.

A. No."

The defendant in his evidence said at pages 19 and 20:

"Q. Did you tell them that the orchids were included in the sale of house.

A. I made it quite clear that the orchid beds in the garden and the plants planted on the ground would not be touched. In other words it goes with the sale of the house.

That the three orchid sheds would not be included, because they were rare species and stud plants. But if anyone were interested in taking the whole as a collection the matter could be arranged.

When I say the matter could be arranged I would put a price on it. It is an extra."

and at page 21:

"On 30th May, Reddi informed me that plaintiff was not prepared to offer more than $70,000.

Reddi asked me to consider. I told Reddi I would consider on one condition. $70,000 would be considered if plaintiff was able ot pay the full amount on the sale of the house — i.e. in one lump sum. Payment to include the remaining furniture. No mention was made of orchids. They showed no interest in the orchids."

and further down:

"On 2nd June, they called at my house. As soon as Reddi, T.O. Thomas and plaintiff came in plaintiff told me that he was prepared to pay me $18,000 as the first payment and balance at the end of the month. I expressed my surprise. I was led to understand by Reddi that payment in one lump sum was being considered. Then T.O. Thomas intervened. He said he would be prepared to help out in the matter if I could agree to accept $30,000 first and the balance at the end of the month. I was not prepared to accept this."

and at page 23:

"I deny that the sale of house would include furniture and orchids.

.....

Q. Put Reddi said 'Look at these beautiful orchids you get this with the house.'

A. No, not in my hearing at least.

T.O. Thomas and plaintiff were quiet. They gave me the impression that they were not interested.

I never said I did not want the orchids and that I wanted to sell them. I said I wanted the orchids removed."

I now pass on to consideration of the question of orchids.

The plaintiff said that there were some 150 pots of orchids. The defence's evidence was that there were 515 pots.

Mr. T. O. Thomas said that there was "a canopy" when in fact there were three huge sheds each measuring 60' by 20' according to the defendant.

On the value of the orchids, plaintiff said the value of the orchids is not less than $500/-.

Mr. T. O. Thomas said the value of orchids would be more than $5,000/-.

Evidence was then given by Cheah Say Oh (PW2) a witness called by the plaintiff. He said there were few thousand pots of orchids.

In examination-in-chief PW2 said:

"I believe the plaintiff wanted to buy my neighbour's house. He wanted to ask me to look after the house including the orchids *if he succeeds in purchasing the house.*" (Italics supplied).

This brings me to the matter of inventory. Plaintiff in cross-examination admitted that he would take an inventory of the items concerned should he decide to buy the said house to prevent any dispute. I quote the relevant passages:

"Q. Would it be proper to take an inventory then.

A. I do not think so as I *was not decided whether I would buy the property.*

Q. If you had decided to buy the property then you would have taken an inventory of furniture and orchids.

A. Yes, I agree this would prevent any dispute." (Italics supplied).

Now what are the accepted facts. In my judgment they are:

Firstly, the pleadings where the plaintiff has by para. 12 of his Statement of Claim said:

"..... defendant gave the plaintiff to understand that he was planning to leave for Johore Bahru for good on the 8th June 1969....."

Defendant in his evidence at page 22 of the Record said:

"I planned to go to Johore Bahru as soon as the property was sold."

Secondly, the advertisement produced as Ex.D.1 to which reference has been made earlier clearly states in no uncertain terms "Property for *quick sale*" and, as rightly pointed out by Counsel for the Defendant, there was no reference to furniture or orchids.

The second paragraph started with the words:

"*Firm offers* in writing should reach....." (Italics supplied).

It is relevant to observe that the defendant said that when he showed the plaintiff and Mr. Thomas his orchids, the two showed no interest whatsoever. This in my judgment supported and is consistent with the evidence to which reference has been made as to the number of pots of orchids and the sheds. The matter in my judgment was left in a state of negotiation.

Quite clearly the advertisement means what it says "Property for quick sale" and in my judgment the defendant's course of conduct is consistent with his evidence that as soon as his property is sold he was leaving Kuching for Johore Bahru.

These matters put together with the plaintiff's pleadings at paragraph 12 to the effect that defendant gave the plaintiff to understand that he was planning to leave for Johore Bahru for good on the 8th June, 1969, are facts plainly consistent with the defendant's version of "quick sale" and the date 8th June 1969 was within the contemplation of both parties.

That being the position it seems improbable in the circumstances appearing that defendant would agree to the balance of payment at the end of June, 1969, bearing in mind that the second paragraph of the advertisement reads "There is no undertaking to accept the highest or any other offer" and there is evidence that there is a standing offer for $60,000/- for the house.

It is as well at this stage to address ourselves on the question of law.

It is well-established rule that the parties must make their own contract, and this means they must agree to its terms with sufficient certainty. If the terms are unsettled or indefinite, there will be no contract (*Chitty on Contract Vol. 1, 23rd Edn.*, Paragraph 83).

It is provided in section 2 of the Application of Laws Ordinance (Sarawak Cap. 2) that statutes of general application, as administered or in force in England at the commencement of this Ordinance (namely the 13th December, 1949) shall be in force in Sarawak.

It is worthy of note that Order 19 r.15, of the Rules of the Supreme Court, 1957, provides as follows:

"The defendant or plaintiff (as the case may be) must raise by his pleading all matters which show the action or counterclaim not to be maintainable, or that the transaction is either void or voidable in point of law, and all such grounds of defence or reply, as the case may be, as if not raised would be likely to take the opposite party by surprise, or of the preceding pleadings, as, for instance, fraud, limitation, release, payment, performance, facts showing illegality either by Statute or common law, or Statute of Frauds."

In *Soon Hon Seng* v. *Bong Khiuk Nyong*[1] the Federal Court in its judgment necessarily implied that the Statute of Frauds 1677 is in force in Sarawak.

Where the parties enter into a formal document the intention to enter into formal legal relationship is obvious.

But when all that happens is a quite casual conversation whether on the telephone or otherwise, it is very much more difficult to infer that the parties are really contemplating entering into any legal relationship.

The law, it seems to me, does not impute intention to enter into such a legal relationship as that of vendor and purchaser where the circumstances and the conduct of the parties negative any intention of the kind.

It is true negotiations ensued, but the evidence before me seems to indicate that the parties do not intend to be immediately bound, or to put it into Latin, that they have no present *animus contrahendi*, which is of course necessary on the part of all parties to the formation of a contract. What passed was only a negotiation from beginning to end.

Much has been made of the fact that Mr. S. K. Reddi said there was no need for the plaintiff to make an offer in writing and that it would be sufficient for the plaintiff to telephone the offer.

The question then arises can a person contract out of a statutory provision such as the Statute of Frauds with which we are dealing. The answer seems to be "You can no doubt but if you take that course you do so at your own peril".

On the evidence as a whole I am satisfied as a matter of fact that the balance of probability is in favour of the defendant's account of what occurred and I accept his evidence. It seems quite clear and I so find that there was no agreement as to the inclusion of the orchids or furniture in the purchase of the house. Nor, in my opinion was there any agreement come to between the plaintiff and the defendant as to the proposed mode of payment of the purchase price of the house by the plaintiff and I so find.

Before I depart from this case I ought perhaps to add what was said by Lord Buckley L.J. in the recent case *Law* v. *Jones*[2] at page 1001:

"Oral agreements for the sale of land are not common, but they are certainly not unknown. Where laymen have entered into such an agreement, it would, I think, be natural for them to expect that, when the matter had been put into the hands of their legal advisers, the contract would be given a more formal written embodiment."

See also *Tiverton Estates Ltd.* v. *Wearwell Ltd.*[3]

In view of my finding in respect of the first question the other question, whether the contract, if any, is enforceable by virtue of section 4 of the Statute of Frauds, 1677 does not therefore arise.

Even if it be assumed in favour of the plaintiff that what was alleged by him is true, the oral contract is unenforceable in law for failure to conform with the provisions of the Statute of Frauds. (See *Halsbury's Laws of England*, 3rd Edn., Vol. 34, page 207 paragraph 346 and Vol. 8, page 87 paragraph 151.)

The claim for damages for misrepresentation must necessarily likewise fail.

In my judgment there is neither substance nor merit in the other grounds. There must accordingly be judgment for the defendant with costs.

Claim failed.

Solicitors: *Thomas & Co.; Chan, Jugah & Wan Ullok.*

K. PALANIANDY v. TAN BOON YEW

[A.C.J. (Wan Suleiman F.J.) June 26, 1974]
[Seremban — Civil Appeal No. 6 of 1972]

Control of Rent — Rent Assessment Board — Appeal from decision of — Conditions — Power of Board to impose Certificate — Control of Rent Ordinance, 1956, s. 12(1)(m).

This was an appeal by the tenant of premises owned by the respondent from a decision of the Rent Assessment Board. The respondent owner had applied to the Board for a certificate under section 12(1)(m) of the Control of Rent Ordinance 1956. The board made an order from which the tenant appellant appealed. His appeal was successful and the case was remitted back to the board. The board considered the application again, and issued a certificate under section 12(1)(m), one of the terms of which differed from the first certificate, *inter alia*, in that the sum of $11,000 compensation payable by the respondent was reduced to $2,500. The tenant appellant once again appealed and the respondent cross-appealed disputing the validity of the order to pay the stated sum of $2,500 in the certificate of the board, contending that the board had no power to order payment of compensation when granting a certificate under section 12(1)(m). Under section 8(1)(e) of the Ordinance the board may on granting a certificate under section 12(1)(m) impose such conditions as to it may seem just as between the parties.

Held: the board had adequate and reasonable grounds for imposing the condition of compensation, and the first order remitting the case back to the board did not restrict it to re-imposing the conditions it had originally imposed.

Cases referred to:-

(1) *Loxton* v. *Ryan* [1921] St. R. Qd.

(2) *Commonwealth of Australia* v. *Schimdt (No. 1)* [1963] A.L.R. 276.

CIVIL APPEAL.

D. P. Vijendran for the appellant.

Atma Singh Gill for the respondent.

Wan Suleiman F.J.: This is an appeal by the tenant against part of the decision of the Rent Assessment Board Seremban made on 10th February 1969.

The respondent, the owner of the premises, No. 211 Rantau, Seremban had applied to the Rent Assessment Board for a certificate under section 12(1)(m) of the Control of Rent Ordinance, 1956.